

## STATE OF DELAWARE THE COURTS OF THE JUSTICES OF THE PEACE

820 NORTH FRENCH STREET, 11TH FLOOR WILMINGTON, DELAWARE 19801

WILLIAM F. RICHARDSON CHIEF MAGISTRATE TELEPHONE: (302) 577 - 6001

#### LEGAL MEMORANDUM NO. 93-197

TO:

ALL JUSTICE OF THE PEACE, STATE OF DELAWARE

ALL CLERKS OF THE COURT, JUSTICE OF THE PEACE COURTS

FROM:

WILLIAM F. RICHARDSON

CHIEF MAGISTRATE

DATE:

SEPTEMBER 21, 1993

RE:

AN ACT TO AMEND TITLE 10 AND TITLE 11 OF THE DELAWARE

CODE RELATING TO DOMESTIC VIOLENCE AND PROTECTION

FROM ABUSE - SENATE BILL NO. 184

On Friday, July 16, 1993 Governor Carper signed new domestic violence legislation designed to strengthen the state's ability to intervene early in family abuse situations. A copy of this Act is attached to this memorandum for you reference.

One such piece of legislation is Senate Bill 184, which will allow a victim to seek civil remedies, thus giving Family Court the authority to issue restraining orders. However, this new legislation (Senate Bill 184) does not become effective until January 16, 1994.

Family Court will be conducting a series of training seminars during October/November of 1993 and has earmarked a separate session for the Justice of the Peace. As I receive

detailed information from Family Court I will forward the specifics to all judges. Until that time, please refrain from sending individuals to Family Court for the purpose of getting a restraining order.

#### WFR: 1ba

The Honorable E. Norman Veasey
The Honorable William T. Allen
The Honorable Henry duPont Ridgely
The Honorable Arthur F. DiSabatino
The Honorable Vincent J. Poppiti
The Honorable Alfred R. Fraczkowski
The Honorable Thomas B. Ferry
The Honorable Charles M. Oberly
Lawrence M. Sullivan, Esq.
Eugene M. Hall, Esq.
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# DELAMARE STATE SENATE 137TH GENERAL ASSEMBLY

#### SENATE BILL NO. 184

#### AS AMENDED BY

#### SENATE AMENDMENT NOS. 1 AND 2 AND HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 10 AND TITLE 11 OF THE DELAMARE CODE RELATING TO DOMESTIC VIOLENCE AND PROTECTION FROM ABUSE PROCEEDINGS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE: (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend 10 Del. C. §950, by renumbering said section as §944.

Section 2. Amend Title 10, Delaware Code by adding a new Part D entitled "Protection from Abuse Proceedings" as follows:

"§945. Definitions.

The following terms shall have the following meanings:

- (a) 'Abuse' means conduct which constitutes the following:
- (1) Intentionally or recklessly causing or attempting to cause physical injury, or a sexual offense, as defined in 11 <u>Del. C.</u> §761;
- (2) Intentionally or recklessly placing or attempting to place another person in reasonable apprehension of physical injury or sexual offense to himself, herself or another;
- (3) Intentionally or recklessly damaging, destroying or taking the tangible property of another person;
- (4) Insulting, taunting or challenging another person or engaging in a course of alarming or distressing conduct in a manner which is likely to provoke a violent or disorderly response or which is likely to cause humiliation, degradation or fear in another person;
- (5) Trespassing on or in property of another person, or on or in property from which the trespasser has been excluded by court order:
  - (6) Child abuse, as defined in Chapter 9 of Title 16;

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- (7) Unlawful imprisonment, kidnapping, interference with custody, and coercion, as defined in Title 11;
- (8) Any other conduct which a reasonable person under the circumstances would find threatening or harmful.
- (b) 'Domestic violence' means abuse perpetrated by one member against another member of the following protected classes:
  - (1) Family, as that term is defined in 10 <u>Del. C.</u> §901(9). regardless, however, of state of residence of the parties;
  - (2) Former spouses, a man and a woman co-habitating together with or without a child of either or both, or a man and a woman living separate and apart with a child in common.

#### (c) 'Petitioner' means:

- (1) A person who is a member of a protected class and files a petition alleging domestic violence against himself or herself or against his or her minor child or an infirm adult or
- (2) The Division of Child Protective Services acting in the interest of a minor child and files a petition alleging domestic violence or
- (3) The Division of Adult Protective Services acting in the interest of an infirm adult and files a petition alleging domestic violence.
- (d) 'Protective order' means an order issued by the Court to a respondent restraining said respondent from committing domestic violence against the petitioner, or a person in whose interest a petition is brought, and may include such measures as are necessary in order to prevent domestic violence.
- (e) 'Respondent' means the person alleged in the petition to have committed the domestic violence.

#### 6946. Commencement of Action: Procedure.

- (a) A request for relief from domestic violence is initiated by the filing of a verified petition by the petitioner, or by the Division of Child Protective Services or the Division of Adult Protective Services, asking the Court to issue a protective order against the respondent.
- (b) The petitioner need not reveal his or her address, place of residence, school, or employment, or the address or place where his or her child or children receive child care or attend school, if it is alleged

that disclosure of this information would endanger the petitioner. However, the Court may require the petitioner to reveal in confidence his or her current address or place of residence for the purpose of determining jurisdiction or venue.

- (c) A petition for a protective order may be filed in any county where the petitioner resides, the respondent resides, the alleged domestic violence occurred, or where the petitioner is temporarily located away from his or her residence to avoid domestic violence.
- (d) Forms and instructions for initiating a proceeding under this part shall be available from the Clerk of the Court. Assistance from Court staff or Court volunteers shall be available during business hours to assist the parties with all papers which may be filed in connection with a proceeding under this part. Any assistance or information provided by Court staff or Court volunteers under this part does not constitute the practice of law.
- (e) All forms and instructions developed for use by the parties to a proceeding under this part shall contain simple, understandable language.

  §947. Ex Parte Orders and Emergency Hearings.
- (a) A petitioner may request an emergency protective order by filing an affidavit or verified pleading alleging that there is an immediate and present danger of domestic violence to the petitioner or to a minor child of the petitioner or to an infirm adult.
- (b) An emergency protective order may be issued on an ex parte basis, that is, without notice to the respondent, where the petitioner certifies in writing the efforts, if any, which have been made to give notice to the respondent or the reasons supporting the claim that notice should not be required.
- (c) An emergency hearing held on an ex parte basis shall be held the same day that the petition is filed or the next day that the Court is in session. All other emergency hearings shall be scheduled for an expedited hearing within 10 calendar days after the petition is filed.
- (d) In any case in which an ex parte protective order has been issued, a full hearing shall be held within 10 days. The Court may extend an ex parte order as needed, but not to exceed 30 days, to effectuate service of the order where necessary to provide protection.

- (e) If the Court finds by a preponderance of the evidence that the alleged domestic violence has occurred, or if the respondent consents to entry of a protective order, the Court shall grant any appropriate relief, including, but not limited to, the relief set forth in §949.
- (f) In those cases where the respondent is not present for the hearing, or where the hearing is held ex parte, any protective order issued shall be served immediately upon the respondent, in accordance with 10 Del. C. §974. A certified copy of the order shall also be given to the petitioner after the hearing, before leaving the courthouse. If the order recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of the order is not necessary; in those cases, the respondent shall be given a copy of the order before leaving the courthouse.

#### §948. Non-Emergency Hearings.

- (a) Upon receipt of a petition for a protective order, the Court shall order a hearing within 30 days.
- (b) If the Court finds by a preponderance of the evidence that the alleged domestic violence has occurred, or if the respondent consents to entry of a protective order, the Court shall grant any appropriate relief, including, but not limited to, the relief set forth in §949.
- (c) Service of the protective order, as well as provision of copies to the parties, shall take place in accordance with §947(f).

### §949. Relief Available: Duration of Orders. Modification and Termination.

- (a) After consideration of a petition for a protective order, the Court may grant relief as follows:
  - (1) Restrain the respondent from committing acts of domestic violence, as defined in §945;
  - (2) Restrain the respondent from contacting or attempting to contact the petitioner;
  - (3) Grant exclusive possession of the residence or household to the petitioner or other resident, regardless of in whose name the residence is titled or leased. Such relief shall not affect title to any real property;
  - (4) Order that the petitioner be given temporary possession of specified personal property solely or jointly owned by respondent or

petitioner, including but not limited to, motor vehicles, checkbooks, keys and other personal effects;

- (5) Grant temporary custody of the children of the parties to the petitioner or to another family member, and provide for visitation with the respondent, if appropriate, including third party supervision of any visitation, if necessary, in accordance with Chapters 7 and 19 of Title 13;
- (6) Order the respondent to pay support for the petitioner and/or for the parties' children, in accordance with Chapter 5 of Title 13, including temporary housing costs;
- (7) Order the respondent to pay to the petitioner or any other family member monetary compensation for losses suffered as a direct result of domestic violence committed by the respondent, including medical, dental and counseling expenses, loss of earnings or other support, cost of repair or replacement of real or personal property damaged or taken, moving or other travel expenses, and litigation costs, including attorney's fees;
- (8) Order the respondent to temporarily relinquish to the sheriff, constable or to a police officer the respondent's firearms and to refrain from purchasing or receiving additional firearms for the duration of the order;
- (9) Prohibit the respondent from transferring, encumbering, concealing or in any way disposing of specified property owned or leased by parties;
- (10) Order the respondent, petitioner and other protected class members, individually and/or as a group, to participate in treatment or counseling programs;
- (11) Grant any other reasonable relief necessary or appropriate to prevent or reduce the likelihood of future domestic violence.
- (b) Relief granted under this section shall be effective for a fixed period of time, not to exceed one year, except that such order may be extended or modified by a further order of the Court as described in (c) and (d).
- (c) An order issued under this part may be extended, for up to six months, or terms of the order modified, upon motion of either party. Hearings on such motions shall be scheduled within thirty days after proof

of service on the respondent is filed. Such motions may be heard on an emergency basis if filed in accordance with §947.

(d) Only the Court shall modify an order issued under this part and the reconciliation of the parties shall have no effect on the validity of any of the provisions of such an order. The protective order may be modified or rescinded during the term of the order upon motion, after notice to all parties affected and a hearing.

#### §950. Enforcement: Sanctions for Violation of Order.

- (a) The Court may direct that pleadings and orders filed or issued under this part be served upon the respondent by the Sheriff or his deputy or by any person authorized by statute or court rule to serve process.
- (b) A copy of a protective order granted under this part shall be entered into the Delaware Justice Information System by the Court on or before the next business day. A copy of the protective order shall be sent immediately to the Delaware law enforcement agency in whose jurisdiction the petitioner resides and/or where the abuse occurred. Entry into the Delaware Justice Information System constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county of the state.
- (c) It shall be the duty of any law enforcement officer to arrest with or without a warrant any person whom the officer has probable cause to believe has violated a protective order issued by the Court and of which the person arrested has notice or knowledge. The person arrested shall be immediately taken before the court issuing the order. If the court is not in session, then the arrested person shall be taken before the nearest Justice of the Peace until bail is fixed. If bail is to be fixed, the justice of the peace or the judge shall take into consideration in determining the amount of bail whether the defendant has previously violated an existing protective order.
- (d) All protective orders issued under this part shall state that violations may result in:
  - (1) a finding of contempt;
  - (2) criminal prosecution; and
  - (3) imprisonment or fine or both.
- (e) It shall be unlawful for a respondent to knowingly violate a protective order. Violations shall be punishable as a Class A

misdemeanor. Nothing in this subsection shall preclude the filing of a civil contempt petition by the petitioner for violations of a protective order issued under this part.

#### §951. Nonpreclusion of Remedies.

Nothing in this Act shall preclude a petitioner or law enforcement officer from filing criminal charges when probable cause exists.

#### §952. Jurisdiction.

The Family Court shall have jurisdiction of proceedings under this Part."

Section 3. Amend 10 <u>Del. C.</u> §922(a) by adding a new subparagraph as follows:

"(22) Violation of a protective order under 11 Del. C. §1271A."

Section 4. Amend Title 11, Subchapter VI, Delaware Code, by adding a new section §1271A as follows:

"§1271A. <u>Criminal Contempt of Family Court Protective Order: Class A</u>
<u>Misdemeanor</u>

A person is guilty of criminal contempt of a Family Court protective order when he knowingly violates or fails to obey any provision of a protective order issued by Family Court.

Criminal contempt of a Family Court protective order is a Class A misdemeanor."

Section 5. Amend §1904(a) of Title 11 to add the following subparagraph:

- "(5) Out of his presence and within the State for a violation of a protective order issued by Family Court."
- Section 6. Reletter existing Parts D and E of Chapter 9 of Title 10 as Parts E and F of Chapter 9 of Title 10.
- Section 7. This Act shall become effective six months after the day on which it is entered into law.

Section 8. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not effect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.